

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020 – 195 - E

In the Matter of:)	REPLY OF THE OFFICE OF
Duke Energy Carolinas, LLC's and Duke)	REGULATORY STAFF TO THE
Energy Progress, LLC's Joint Petition for)	PETITION OF DUKE ENERGY
Approval of Accounting Order to Defer)	CAROLINAS, LLC AND DUKE
Incremental Expenses as a Result of COVID19)	ENERGY PROGRESS, LLC
_____)	

On August 14, 2020 Duke Energy Carolina, LLC (“DEC”) and Duke Energy Progress (“DEP”) (collectively “Companies” or “Duke”), filed a Petition with the Public Service Commission of South Carolina (“Commission”) seeking an Accounting Order from the Commission to allow the Companies to establish deferral accounts for incremental expenses related to COVID-19.

The South Carolina Office of Regulatory Staff (“ORS”) has begun the process of conducting discovery with the Companies regarding this Petition. As a result, ORS has not had sufficient time to adequately complete discovery and study this issue under the Commission’s current plan to rule on this Petition on October 21, 2020. Nevertheless, ORS wants to advise the Commission of certain concerns it has identified based on its review thus far of the Companies’ Petition:

I. Timing of Ruling by the Commission

ORS requests that the Commission delay taking any formal action on the Duke Petition until current discovery can be completed and all parties are afforded sufficient time to establish formal positions and recommendations utilizing the data, evidence and responses provided by the Companies.

II. Notice to Customers

Requiring notice is necessary because of, and consistent with, the positions which the Companies have taken in briefs filed with the South Carolina Supreme Court in their recent appeals of the Commission's Orders in their last general rate cases. See Docket Nos. 2018-318-E and 2018-319-E, see also Appellate Case Nos. 2019-001900 and 2019-001904. In their initial brief filed with the Supreme Court in these cases, the Companies have asserted that the Commission, by granting an accounting order to establish a regulatory asset, guarantees the utility recovery of its underlying claimed expenses and a return on those expenses in the next general rate proceeding. Notably, Duke has argued that "permitting the utility to establish a deferral and then depriving it of the opportunity to earn a reasonable return on the funds devoted to public service as the Commission has done here is confiscatory and constitutes a taking under the U.S. Constitution." (Appellant's brief, pg. 49).

The Companies claim entitlement to recovery of both deferred costs, any carrying costs and a return related to the deferral. As a result of this rate-making argument, the Companies must provide notice to their customers. Because a request for a deferral in this matter is viewed by the Companies as a formal determination of dollar amounts which will be added to the Companies' rate bases in the next general rates case, a Commission decision on the deferral request would also necessarily affect the entire company rate structure, and thus require notice to and a public hearing for the utility's customers under S.C. Code Ann. § 58-27-870. The Companies claim that while Commission approval of a deferral binds the Commission in the next general rate case, they are not required to provide notice to their customers in the current proceeding. These positions are clearly inconsistent and violate the principles of due process. Customers should be made aware of

the Companies' efforts to obtain approval to recover COVID-19 costs in rates approved by the Commission which will likely be incurred outside a normal regulatory test year.

While the Companies have made general announcements addressing waiving customer fees, suspending disconnections and offering payment plans during the pandemic, customers should be placed on notice that the Companies intend to seek recovery of these costs and waived customer fees from its customers. Additionally, customers, the Commission, the Consumer Advocate and ORS should all be notified of the potential economic impact of these costs and waived customer fees on future bills and be given the opportunity to scrutinize these costs before they can be fast-tracked for possible rate case recovery.

The final economic impact of the pandemic and its effect on Duke and its customers is not currently known. For example, according to page 10 of the Companies' Petition, the majority of incremental costs which they now seek to defer are related to waived customer fees and bad debt/charge-offs. However, some of those customers may currently be making payments and others may have made payment arrangements; meaning that the customers may end up fully paying Duke. These customer accounts may not even be recorded as a bad debt or a charge-off by the Companies unless or until such time as the customer fails to make a payment required under their payment plan.

III. Opportunity for Additional Comments and Discussion

ORS requests the Commission refrain from taking action on Duke's Petition on October 21, 2020, require notice to the Customers, and consider establishing a procedural schedule for the filing of comments so as to allow for all interested parties to examine and evaluate any discovery responses provided by the Companies before filing comments. Comments are due to the North

Carolina Utilities Commission on the Companies deferral request in that state on October 30, 2020. ORS is monitoring that docket¹.

Importantly, the Companies increased expenses are only one side of the coin. The Companies have publicly reported cost savings of approximately \$170 million in the second quarter of 2020.² The Companies should not be permitted to defer additional expenses associated with COVID-19 without being required to offset those expenses with those costs savings which have also been created by the pandemic. For example, the Companies may have opportunities to obtain tax credits or other economic mitigation provided by the federal government as a result of COVID-19 and any benefits of such mitigation should be passed down to the customer. In order to address associated savings experienced by the Companies, ORS served discovery on the Companies. ORS requests sufficient time to review the Companies responses in order to fully develop a conclusion and final position to offer to the Commission on this issue. A full and complete view and understanding of the Companies financial conditions, savings, and losses must be reviewed by ORS and any other interested parties as customers are facing the possibility that they are going to be burdened with higher electric bills due to COVID-19 utility operations.

IV. Conclusion

ORS respectfully requests that additional time be afforded to ORS and any Intervenors to complete discovery. Further, that the Commission require notice of this proceeding to customers to afford them the opportunity to be heard given the position taken by the Companies before the South Carolina Supreme Court. ORS recommends that the Commission consider establishing a procedural docket to allow for comments by customers and other interested parties.

¹ <https://starw1.ncuc.net/NCUC/PSC/DocketDetails.aspx?DocketId=b15a42da-feec-4068-8ddf-cd21dbdef30c>

² <https://www.bizjournals.com/charlotte/news/2020/08/10/duke-energy-betterthan-expected-q2.html>

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